No. 83-1968

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

LACY H. THORNBURG, *et al.*,
Appellants

v.

RALPH GINGLES, *et al.*,
Appellees

On Appeal from the United States District Court for the Eastern District of North Carolina

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF LEGAL SERVICES OF NORTH CAROLINA

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF LEGAL SERVICES OF NORTH CAROLINA IN SUPPORT OF RESPONDENT

Legal Services of North Carolina and several of its constituent programs move this Court, pursuant to Rules 36 and 42 of the Rules of the Court, for leave to file the attached brief *amicus curiae.*

Movant wishes to present views in support of the position of the respondent (as stated in its brief to this Court in support of the motion to dismiss or affirm the appeal). This motion is timely pursuant to Rule 36.3, since it is made prior to the filing of respondent's brief on August 30, 1985.

Movant is especially concerned about statements contained in the brief for *Amicus Curiae*, the United States,

sponsored by the Solicitor General. Its brief contained the following statement: ". . . there are no present barriers to minority registration or candidacy." Brief for *Amicus Curiae*, the United States at 18 n. 17.

Movant, as counsel in two cases in the Eastern District of North Carolina, filed pursuant to provisions of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973 and 1973c, is convinced that the above quoted assertions presented by the United States are factually and legally incorrect. Movant is further convinced that arguments in opposition to these specific contentions by United States have not been presented in full by any party or *Amici* herein. Without unnecessary duplication of matter already before the Court, movant presents an analysis of these key voting participation factors so relevant to this case in the accompanying brief *amicus curiae*.

For this reason, movant Legal Services of North Carolina respectfully moves this Court pursuant to Rule 36.3 for leave to file the accompanying brief *amicus curiae*.

Movant, Legal Services of North Carolina, has received written consent to file this brief from counsel for respondent herein by letter dated July 12, 1985. Consent of the appellants, as represented by the Attorney General of North Carolina has not been obtained.

Respectfuly submitted,

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August, 1985

CONTENTS

TABLE OF AUTHORITIES

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BRIEF OF LEGAL SERVICES OF NORTH CAROLINA

INTEREST OF AMICUS CURIAE

Amicus, Legal Services of North Carolina (LSNC), including two of its affiliate programs, is deeply and intimately concerned about the outcome of this case. Two LSNC field programs have represented, or are currently representing, plaintiffs in actions filed against municipal governing bodies, pursuant to the Voting Rights Act. *Canady v. Lumberton City Board of Education*, No. 80-215-Civ-3 (E.D.N.C. filed Dec. 22, 1980); *Green v. City of Rocky Mount*, No. 83-81-Civ-8 (E.D.N.C. filed September 25, 1983).

LSNC is essentially a statewide program responsible for civil representation of poor people in eighty three of North Carolina's 100 counties. LSNC includes twelve

geographically based local field programs with multi-county regions that encompass some of the districts which are the subject of this appeal. In addition to the eighty three county service area, LSNC includes three special client programs responsible for services to migrant and seasonal farm workers, State prison inmates and mentally handicapped persons. The Legal Services programs in North Carolina are funded by the national Legal Services Corporation established by Congress in 1974.

Overall, Legal Services programs in North Carolina receive over 35,000 requests for assistance from eligible, low income persons each year, and provide service to approximately 25,000 of these persons. There are 1.3 million persons in North Carolina who are governmentally defined as eligible for legal services. The basic eligibility criterion is that annual gross family income be less than 125% of the federal poverty line.

Racial minorities and Native Americans are disproportionately represented within the State's poverty population served by Legal Services programs. The 1980 Census indicates that 51% of the State's poor are white and 45% are black, though blacks compose only 20% of North Carolina's population. There are also 55,000 non-federally-funded recognized Indians in North Carolina. Thousands of these legal-services-eligible, low income persons reside in districts which are the subject of this appeal and whose voting rights are affected by this challenge to the decision below.

In the Eastern District of North Carolina alone, not including the case at bar, no less than five actions alleging Voting Rights infractions have been filed since January, 1980. These actions, filed pursuant to Section Two and/or Section Five of the Voting Rights Act, affect city councils, county commissioners and other elective offices. In their respective regions, these local officials make daily decisions which impact directly on the health, economic

and social well being of low income and minority individuals. Legal Services programs in North Carolina have traditionally represented clients in substantive law areas, such as housing, consumer and governmental benefit programs which are directly impacted by actions of elected local and State officials.

With the decision of the court below, minorities in many North Carolina municipalities and communities have benefitted significantly. With the increased opportunity to participate in the political process and to elect representatives of their choice afforded by the decision below, minority representation in the North Carolina General Assembly has increased by over 400% since 1982, rising from a mere three to sixteen such elected officials. With this new representation, the General Assembly has become more responsive to the needs of minorities, especially low income minorities and other low income people, thereby enacting measures designed to address their needs.

An adverse decision in this case by the Court now would not only slow the progress achieved, but would make for a swift return to the recent past of racial contempt when government bodies showed little or no sensitivity to issues affecting black and low income citizens. A principle interest of *Amicus* is the protection and preservation of court decisions in voting rights cases achieved by its affiliate programs. However, no one should misjudge the stunning effect in North Carolina of this Court's reversal of the decision below. LSNC's interest in this case is thus considerable and justified. Affirmation of the ruling below is critical to the continued easing of racial tensions and stability of voting rights in North Carolina, and is justified under Section Two of the Voting Rights Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus, Legal Services of North Carolina, urges affirmance of the judgment of the United States District Court for the Eastern District of North Carolina substantially for reasons set forth in the respondent's brief in support of its motion to dismiss or affirm this appeal. Respondent's brief develops with preciseness and force one of the keys to an affirmance of the judgment below which Amicus explores more fully here: black citizens in the challenged districts, and in the State as a whole, continue to be denied equal access to the political process and equal opportunity to elect candidates of their choice.

Appellants have argued that the Court find no violation of Section Two of the Voting Rights Act where there has been some success, however rare, by black candidates running for elective offices in multi-member districts. Appellees and *Amicus*, however, strongly urge the Court to hold that the recent and uncharacteristic election of a nominal number of black candidates is but *one* factor to consider. The Court, as a matter of law, must consider the totality of circumstances, applying all the objective factors enunciated by Congress in determining whether there is a violation of Section Two.

Amicus argues (Point I) that the district court below was correct in applying the totality of circumstances standard to North Carolina's proposed legislative redistricting plan. Point I further argues that the three-judge district court properly identified all the required factors identified by the Act, pertinent Congressional history and relevant case law, and applied these factors to the facts of this case.

Point II argues that, given the totality of circumstances that currently exist in the State of North Carolina, as a whole, and in the challenged districts, the district court's findings of fact and conclusions of law were neither clearly erroneous, nor wholly incorrect. North Carolina's

long history of disfranchisement and vote dilution tactics continues even today. Without strong and effective enforcement of the Voting Rights Act, these devices and practices would continue, in violation of Section Two, to dilute and chill black voter participation. *Amicus* discusses many of these rules and practices in detail in its brief. Finally, as part of the totality of circumstances, *Amicus* contends that North Carolina's political landscape still evidences frequent instances of subtle and not so subtle racial appeals in political campaigns. This practice places an undue burden on minority candidates and hampers their chances of being elected.

Amicus agrees with respondent that neither the expressed Congressional intent associated with Section Two of the Act, nor relevant federal court cases, provide any sanctuary for appellants. The judgment below should be affirmed.

ARGUMENT

I. THE DISTRICT COURT PROPERLY IDENTIFIED THE TOTALITY OF CIRCUMSTANCES STANDARD IN ASSESSING THE STATE'S PROPOSED REDISTRICTING PLAN PURSUANT TO SECTION TWO OF THE VOTING RIGHTS ACT.

The opinion of the three-judge court below did expressly deal with the proper standard for review of a Section Two vote dilution claim. Well-instructed by the decisions of the various federal courts and the clearly articulated factors set forth in the legislative history of the Voting Rights Act, the District Court grounded its decision in "the totality of circumstances." In doing so, the district court left little doubt as to its view of the relevant factors which are to be considered in determining whether black voters, because of the use of the multi-member district election system in certain North Carolina districts, "have less opportunity than other members of the electorate to participate in the political process and

to elect representatives of their choice." 42 U.S.C. § 1973, as amended.

But even more to he point is the fact that the district court's opinion specifically reiterates the pertinent factors listed in the Congressional reports accompanying the Act's passage. J.S. at 13a-14a. This is in addition to the court's extensive treatment of *White v. Regester*, 412 U.S. 755 (1973), and its progeny. J.S. at 10a-16a. The analysis of the court below, with respect to a Section Two vote dilution claim, clearly extends to the North Carolina redistricting plan. This multi-member election system was not open to full minority participation, and under *Register* would constitute a violation of Section Two.

On this detailed analysis and the fully developed factual findings of the district court, there is little need to explore whether the court understood the Congressional mandate and relevant judicial precedents. Unlike the position advanced by the appellants, there is no question but that the district court considered all relevant factors without attaching undue significance to a single factor in its analysis. According to case law and the legislative history referenced above, the district court thoroughly performed the required analysis.

II. UNDER SECTION TWO OF THE VOTING RIGHTS ACT, THE DISTRICT COURT'S DECISION IS A CORRECT APPLICATION OF THE TOTALITY OF CIRCUMSTANCES STANDARD TO THE NORTH CAROLINA GENERAL ASSEMBLY DISTRICTS.

A. The district court's detailed findings of fact are correct and support its conclusion of impermissible vote dilution.

North Carolina has long enjoyed a reputation as a mecca for progressive southern politics. Rather than take a critical look at the lack of equal participation in the State's political process by blacks, many observers have

merely compared North Carolina to states like Mississippi, Alabama or Georgia which have well-documented histories of overt racism. A closer examination of North Carolina, however, would have revealed a sophisticated, official system operating to effectively limit black voter participation.

A recent update of the 1948 landmark state-by-state study by V.O. Key, *Southern Politics*, found that upon comparing North Carolina's "level of participation and modernization of the political process . . . and the emergence of race as a significant political issue, what remains is a political plutocracy that lives with a progressive myth." *See* Finger, *Fly Specs On a Tablecloth?—A Profile of North Carolina*, in The State of the State, A Legal Services Perspective on the State of North Carolina (1979). As the court found, North Carolina has a past and present history of discrimination against black voters in registration and voting. J.S. at 51a-52a. In 1900, white democrats used an overtly racist "white supremacy" propaganda campaign, violent intimidation and corruption in voting to persuade voters to amend the State's constitution to provide for a poll tax and a literacy test, with a grandfather clause designed to limit the disfranchising effects of the literacy test to blacks. As a result, by 1950, black voter registration and elective office-holding virtually disappeared. J.S. at 22a-23a.

North Carolina legislators enacted numerous other laws designed to disfranchise black voters. An anti-single shot mechanism was enforced beginning in 1955 which applied to specified municipalities and counties. A 1967 numbered seat plan also prevented single shot voting in multi-member legislative districts. Both were used until declared unconstitutional in 1972. J.S. at 23a.

The majority vote requirement used in primaries, but not in general elections, is another barrier to equal opportunity of black political participation. N.C. Gen. Stat. § 163-11. Candidates are required to obtain an absolute

majority of votes (50%, plus one), rather than a simple plurality to win. The effect of the majority vote requirement is to make it less likely that a minority candidate will win an election. Running head-to-head against a white candidate, the minority candidate usually is unable to overcome the white voter support of his opponent.

After the removal of direct barriers to voter participation, the chilling effect of decades of electoral discrimination, disfranchisement and candidate diminution persists. This factor accounts for the relatively low levels of black voter registration in the State today. J.S. at 25a-26a.

In 1981, when this action was commenced, North Carolina ranged among the bottom of southern and border states in the number of registered black voters. J.S. at 24a. The disparity in black and white registration results from the past and present official impediments to voting which still discourage blacks from participating fully in the political process.

B. This disfranchisement continues in North Carolina and currently occurs indirectly by operation of rules and practices.

Striking parallels exist between prior movements for enfranchisement of blacks and recent developments in North Carolina. The history of black enfranchisement in the South has been chronicled at length elsewhere. *See, e.g.*, McDonald, *The 1982 Extension of Section 5 of the Voting Rights Act of 1965: The Continued Need for Preclearance*, 51 Tenn. L. Rev. 1 (1983).

Until recently, the Attorney General has had a dismal record of monitoring and enforcing federal voting laws in North Carolina. For example, from 1965 to 1968, no North Carolina county subject to the Section Five preclearance provision of the Voting Rights Act submitted any voting change for preclearance by the Department. *Id.* at 63 . Thus, the Justice Department has allowed

the effects of past discrimination to continue to serve as barriers to full participation by blacks in the electorate in this State.

Because of its lax enforcement record in North Carolina, the Department of Justice totally misapprehends the current lack of equal opportunity for participation by black voters in the State's political processes and that group's ability to elect representatives of their choice. In a footnote to the Attorney General's *amicus* brief in this appeal, the Department makes a bold assertion. To support its contention that minority candidates elected in the challenged districts are both "successful" and "competitive," Brief for *Amicus Curiae*, the United States at 18, the Department states: ". . . there are no present barriers to minority registration or candidacy." Brief at 18 n.17. Nothing could be further from reality. The manipulation of election procedures today by local officials to perpetuate voter discrimination continues to taint North Carolina elections.

This naked assertion, unsupported by any documentation in the Brief, reflects the Department of Justice's ignorance, which no doubt results from depressed voting rights enforcement activities in North Carolina. Many of the voting practices and irregularities which *Amicus* discuss in detail below occur unchallenged in local precincts and counties across the State. Few local individuals or organizations have the resources and expertise to challenge any of these practices. The Voting Rights Act, however, was designed to strengthen the federal government's capacity to guarantee meaningful minority political participation.

But neither the Department of Justice, nor appropriate State and local agencies, have adequately addressed the current subtle and "ingenious" tactics employed at the local level which discriminate against and dilute black voter participation. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966). Indeed, in recent conversations between Legal Services attorneys representing clients and

Department of Justice officials, Agency personnel have candidly acknowledged that their contacts in North Carolina, until recently, were limited to one or two State Board of Election officials.

Prior to initiation of this pending action and other voting rights lawsuits filed in North Carolina, the Justice Department neither sought, nor encouraged direct communication with local black community leaders or elected officials with specific knowledge of elections practices. For these reasons, the Department has, through its own inactivity, remained insulated from and largely ignorant of the existing policies and practices carried out by election officials. These voting irregularities are present statewide and significantly diminish the power of black voters in this State. J.S. at 21a.

Disfranchisement mechanisms prevent or discourage people from voting and may be accomplished directly by law, or extra-legally. Davidson, *Minority Vote Dilution: An Overview* (reprinted in C. Davidson, *Ethnic Minority Vote Dilution* (1984)). Dilutionary mechanisms and practices continue to exist which prevent blacks from casting an effective ballot. Yet, North Carolina officials have failed to exercise the degree of active leadership necessary to overcome decades of black voter exclusion.

Amicus, in the representation of its clients in voting rights matters, has discovered the following discriminatory and dilutive voting practices in some counties in North Carolina, including some areas encompassed by House Districts 21, 36, 39, and Senate District 22.

The State Board of Elections, which supervises the local boards of elections, has not properly guided the local boards and performed its duty to ensure democratic participation by all citizens, as required by the United States Constitution and the Voting Rights Act. The local boards have consistently read State and federal voting regulations and laws with the narrowest interpretation.

But the State Board may train local election officials, issue directives on election procedures, decide election contests, or remove local board members. M. Crowell, *The Precinct Manual* (1984). It is responsible for the fair and honest conduct of all elections in the State. Since this lawsuit was filed, the State Board has begun to place some emphasis on black voter registration. J.S. at 25a.

Limited accessibility to voter registration opportunities and an extreme lack of cooperation by the local boards are the rule in many North Carolina counties. Despite protest from black democrats who comprise 33.6% of that county's voting age population, the Durham County Board of Elections is all white. (Px. 58) Racial membership on the county boards of elections is tightly controlled by recommendations of local political party chairs or, in the case of municipal boards, by city council representatives. Crowell, *supra*, at 5.

Voter registration has been hampered by the Durham Board's refusal to allow precinct registrars to register voters outside of the registrar's homes. Until the State Board intervened in 1982, registrars in the County could register only residents of their own precinct. (T p. 657, 553-55)

Since official barriers to black voter registration did not and do not completely disfranchise blacks, official acts at the polling place substantially contribute to the continued denial of equal voter participation by blacks. Many blacks are denied an opportunity to vote due to inordinate delays and long lines due to confusion by election officials, including failure to locate newly registered voters on official lists. Deliberate, or planned inefficiency by local boards is aimed at discouraging increased black voter participation. These techniques have included inadequate personnel to accommodate heavy voter turnout and having insufficient numbers of ballots available at predominantly black precincts.

Black voters are often erroneously directed to incorrect precincts. This misdirection has an enormous impact due

to timeliness, and more critically, the lack of available transportation (T p. 686), especially in the State's rural areas. There is a general lack of awareness of current local and national elections law requirements. As a partial response, the North Carolina Board of Elections has recently distributed a few rulings and guidelines, usually after official protest of voting irregularities by defeated black candidates. But as noted, the laws, rules and regulations are almost always narrowly defined, as applied to black voters at the local level.

In general, blacks have no immediate recourse for denial of the right to vote. Local precinct officials often are without authority or refuse to resolve disputes without clearance from the county Board of Elections. Due to the lack of time and transportation, as noted above, the referral of black citizens to County Boards of Elections offices (which may be as far away as 18 miles) results in denial of the right to vote. For example, over 27% of blacks, comapred with about five percent of whites, have no vehicle available to them in Forsyth County. (Px 57; T. 634)

Often, precinct or Board of Elections officials may call into question the qualifications of a black citizen to register or vote. Most often challenges relate to the prospective voter's residency. There are procedures under North Carolina law for handling challenges by the Boards or at the polls. Crowell, *supra*, at 54-55. Yet, due apparently to lack of familiarity with this process, the challenged ballot procedure is not used frequently to permit exercise of the franchise in disputed situations. If election officials uphold a challenge by finding a voter is not qualified, he may still fill out a special ballot. Crowell, *supra*, at 56.

Assistance to voters guaranteed under State and federal law has been denied by poll officials in many North Carolina counties. The need for voter assistance is critical in this State with its high rate of adult illiteracy. Over a quarter of Forsyth and Mecklenburg counties' black

adults, for example, have only an eighth grade education or less. So blacks ir these counties and elsewhere in the State enter the poli.:cal process with a substantial handicap. (Px. 56-57)

North Carolina law permits assistance to any voter upon request by a near relative. State law also allows assistance to disabled, illerate or elderly voters. Crowell, *supra*, at 40. Curbside voting is permitted for those physically unable to come into the polling place without help. *Id.* A new federal law authorizes aid to the handicapped or those unable to read. 42 U.S.C. 1973aa-6. The new federal law permits assistance to more than one voter by the the same person. Repeated assistance to different voters had been allowed by poll officials even under the North Carolina law. During elections conducted in 1984, precinct officials issued confusing and conflicting rulings in response to requests for assistance by black voters. Precinct officials were warned "to avoid embarassing the voter, especially if he is illiterate." Memorandum from the State Board of Elections to County Boards of Elections dated February 21, 1984. But many precinct officials demonstrated hostile, argumentative, rude and insensitive behavior, after receiving requests for assistance. Aid to voters was either arbitrarily permitted or denied with little or no explanation of the justification.

Conflicting interpretation over these and other voting rights issues has sometimes resulted in verbal confrontations between black voters and white poll workers. Use of uniformed officers is not unknown at some polling places, particularly in rural areas, to intimidate or harass black voters who question illegal practices.

Voting machines often malfunction due to poor maintenance in predominantly black precincts when the turnout is heavy. Precinct workers have been observed in such situations carrying ballots in their hands from one location to another in the polling place, contrary to State

ballot counting procedures. Obviously, these practices increase the possibility of ballot miscount.

Poll officials have also erroneously directed prospective voters to discard sample ballots and campaign literature before entering the voting enclosure. This misinterpretation of the "electioneering rule" has severely impacted on illiterate and newly registered voters confused by the lengthy and complicated North Carolina ballot.

Because of the aforementioned voting difficulties, many county boards of election are overwhelmed with complaints and problems on election day. The staff of these offices are unprepared to respond efficiently to black voter registration problems. Boards of election offices become bottlenecks to further impede black voter participation.

A measurable increase in black voter participation in North Carolina has sparked organized opposition and hostility among some election officials and others designed to further chill black voter participation. Racial appeals have historically been used in statewide elections. J.S. 31a-32a. In Durham County, for example, racial appeals have continued to the present as evidenced in the 1982 Congressional race and later in the 1984 race for the United States Senate. (T. 354; Px 51) Newspaper advertisements in the *Durham Morning Herald* have associated some candidates with striking black teachers in another state or alleged expenditures of State funds for black voter registration activities. A fundraising letter from one of the State's political party chairmen, mailed to 45,000 individuals, labeled an increase in new black voter registration "freightening" and "potentially disasterous." News and Observer, August 14, 1984, at 1, col. 1.

Rumors of an organized plan in North Carolina to challenge and disrupt allegedly improperly registered black voters abounded during the November, 1984 election. This strategy was termed a "ballot security" initiative by its supporters. These and other incidents have

caused political strategists to note the injection of racial issues into more recent North Carolina election campaigns. News and Observer, June 2, 1985, at 17A, col. 2.

Despite the pervasiveness of the barriers to black voter participation in the State, the Justice Department has only certified one North Carolina county for federal observers under provisions contained in the Voting Rights Act.

C. The district court correctly considered electoral successes as one factor under the totality of circumstances standard.

The district court did consider electoral successes. However, the district court correctly labeled these still limited and recent successess by minority candidates as uncharacteristic. J.S. at 37a. We agree, based upon our knowledge of the continuing gap between effective participation by black and white voters in the State. Of critical importance is that the 1982 successes were made after this lawsuit was filed in 1981. There are numerous reasons for the successes of the 1982 elections.

For example, two black candidates were elected to the General Assembly from Forsyth County in 1982. There was an unusually large number of white candidates with no white incumbents running. The election of blacks resulted from the whites spreading their votes among other whites, rather than more whites voting for blacks. Therefore, this will not be repeated and cannot serve as an indication that black citizens have as equal an opportunity as do whites to elect candidates of their choice. (T. 87)

As noted, the majority vote requirement is a critical tool for disfranchising blacks. J.S. at 52a. The rule forces a minority candidate who may have won a plurality to run against the second highest vote getter. Generally, the defeated white candidates organize their support for the top white vote getter, and the resultant runoff usually finds the black candidate defeated. In

order to offset the devastating effects of the majority vote requirements, blacks in 1982 relied heavily on single shot voting. Blacks cast one vote for one candidate (instead of the full party slate) to ensure their candidate's election, in the process, giving up their right to vote for other candidates. J.S. at 41a.

The "success" of the black voter participation in Durham County has been heavily dependent upon the extreme use of single shot voting. J.S. at 41a, 44a. Thus, the "success" of black candidates requires tradeoffs of other voter options. In 1982, single shot voting was prevalent in Forsyth County (House District 39), Mecklenburg County (House District 36), Durham County (House District 23) and Wake County (House District 21). (T p. 85, 1437)

In Forsyth County general elections of 1978 and 1980, black voters gave black candidates 34% and 24% of their votes, respectively. These black candidates lost. (T 613-622) However, black candidates won in 1982 when they received 95% of the black vote. (Px 15 (b) and 15 (d)) There was a sharp increase in concentration of voting by blacks in 1982 in Mecklenburg County. Despite that, only one of two black candidates was successful, even with an unusually low white and Republican turnout. (Tp. 144) Finally, single shot voting in 1980 was the primary reason that the first black was elected to the North Carolina House of Representatives from Wake County in this century. This candidate ran in 1978 and received 21% of the white vote, but was defeated. In 1982, as an incumbent, he received less than 40% of the white vote. (Stipulation 95, 97, T. 582, answer to Interrogatory #2)

Through critical sacrifices and hard choices, blacks may have limited successes. Whites do not have to make the same sacrifices and choices to ensure equal participation in the electoral process.

Clearly, the political participation level of Black citizens remains quite minimal. A few unique individuals, who have achieved professional status as lawyers, entrepreneurs or otherwise distinguished themselves from the generally lower socioeconomic lot of most blacks in North Carolina, can sometimes participate as candidates in the political process. These isolated and still rare instances of limited access to the political process by blacks cannot vitiate the still widespread racial vote dilution which continues to exist in North Carolina.

In many North Carolina communities such as Forsyth County, black leaders who have been outspoken about issues of concern to the black community cannot get white support, and thus cannot win at-large elections. (T. 625-626) Even a witness for appellants conceded that, if a black citizen in Forsyth County wanted to get elected, he would "have to keep [his] mouth shut." (Houser Dep. at 42-43) Thus in recruiting candidates for at-large elections, the black community must look for a "lightweight" (T. 625-626)

Similarly, the president of the Durham County Committee on the Affairs of Black People testified below that his organization limits recruitment of candidates to those who can appeal to the white community. Thus blacks, as opposed to whites, must be businessmen or lawyers and must start with high name recognition. (T. 665-666) Those who have been outspoken in support of unmet needs of the black community are not considered viable candidates.

The degree and extent of the above mentioned dilutive practices will, of course, vary from county to county. Of significance in comprehending these devices is their cumulative and combined effect. Under certain circumstances, the totality of impact may account for the loss of hundreds of votes denied to minority candidates. These votes would have provided the margin of victory to a

minority candidate in a 1984 primary election for an Edgecombe County commissioner's seat. No North Carolina county—and certainly not any of the districts which are the subject of this appeal—has completely rid itself of black voter and candidate discrimination.

CONCLUSION

For the foregoing reasons, *Amicus*, Legal Services of North Carolina, respectfully requests that this Court affirm the judgment of the United States District Court for the Eastern District of North Carolina.

Respectfuly submitted,

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